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Journal - Office of Legislative Counsel  
Friday - 10 November 1972

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25X1 4. [ ] Mr. Fisher, in the office of Representative Olin Teague (D., Texas), called and asked if we would relay to the wife of an Agency employee assigned abroad that her grandmother had died. 25X1

[ ]

25X1 5. [ ] Met with Messrs. Donald Sanders, Chief Counsel, and Richard Schultz, Associate Chief Counsel, House Internal Security Committee, concerning the prospects for broadening the application of 50 U. S. C. 783(b) (Scarbeck statute). Neither were terribly optimistic that any committee effort in this direction would be successful but they agreed that there was a gap that needed to be closed, that they would study the proposal carefully, and that they would endeavor to obtain Chairman Ichord's reaction. They clearly understood that this was merely an informal effort to staff out alternatives and that no policy decisions have been made. They agreed to treat the matter on that basis.

25X1 6. [ ] Mr. Warner and I met with Frank Slatinshek, Chief Counsel, House Armed Services Committee, and explained to him OGC's proposal for amendments to the National Security Act designed to more effectively protect intelligence sources and methods. Slatinshek commented that he was "all for us" in seeking such amendments and that his only concern was whether we could get the support we needed from the Administration, or whether the introduction of such proposals in the Congress might open up questions which we would prefer not to have raised. In any event he is clearly prepared to support whatever proposal we finally decide upon.

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25X1 10. [redacted] Met with John Goldsmith, Senate Armed 25X1  
Services Committee staff, who told me of his impressions from his recent 25X1  
trip to Indochina. [redacted]

25X1 [redacted] In addition to a written report he  
plans to discuss his observations shortly with Chairman Stennis and will let  
us know if he finds the Chairman particularly concerned about any Agency  
problems in the area.

25X1 11. [redacted] Called Dick Schultz, Associate Chief  
Counsel, House Internal Security Committee, and arranged to meet with  
him and Donald Sanders, Chief Counsel, anytime this week at my convenience 25X1  
to discuss possibilities of broadening 18 U. S. C. 783(b) (Scarbeck statute).

[redacted] 25X1  
[redacted] JOHN M. MAURY  
Legislative Counsel

cc:  
O/DDCI

25X1 [redacted]  
Mr. Houston  
Mr. Thuermer  
Mr. Clarke  
DDI DDS DDS&T  
EA/DDP OPPB

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OLC 72-1118  
3 November 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Director's Instructions re Proposed Legislation to  
Protect Classified Info

1. In meeting today with the Director, Colby, Houston, and Warner, the Director instructed that:

a. We not bother with the "assignment of income" or "forfeiture of annuity" proposals but go for the "intelligence data" and/or "Scarbeck statute" solutions.

b. Since proceeding through the "Federal Criminal Code" process may be unduly time consuming, we should seriously consider an appropriate amendment to the National Security Act (Warner noted that heretofore our committees have not accepted responsibility for legislation involving criminal penalties, and therefore this possibly may be foreclosed).

c. Houston is to push ahead with Justice regarding the drafting and related problems, and necessary coordination within the executive agencies including the White House.

d. We sound out our key committee and staff contacts informally and keep Houston and Colby up-to-date on results.

25X1

JOHN M. MAURY  
Legislative Counsel

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Distribution:

Original - Subject  
1 - Chrono

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OLC/JMM:mmc (6 November 1972)

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PRECIS AND COMMENT

SUBJECT: LRH 10 Oct. 1972 Memorandum to DCI Regarding  
Protection of Classified Information

1. 4 possibilities suggested:

- a. Rewrite contract of employment assigning income from speeches or publications.
- b. Amend CIA Retirement Act so that annuity is forfeited if DCI determines secrecy agreement has been violated.
- c. "Intelligence Data" legislation
- d. Amend Scarbeck statute making it a crime to reveal classified information to any unauthorized person.

2. Assignment of Income -- This has appeal because it is based on contract law as applied to the Agency and the Agency has had success in this regard in the Marchetti case; and, as LRH points out, it may discourage the current willingness to divulge secrets for financial gain. No legislation would be required. Draw backs are that it would be only an effective deterrent when income is involved. Aside from its effect as a deterrent, the assignment itself would not stop harmful unauthorized disclosures. Further, the determination on clearing the publication rests with the Director which suggests that the Director is in a position to impose his will on what is to be published. From the outside, this may not appear to be a responsible assumption of power.

3. Forfeiture of Annuity -- (See attachment A for detailed pro's and con's.) This proposal requires legislation and has only limited application. If we are going to pay the price, let's get a whole loaf; such as, "Intelligence Data" or Scarbeck legislation. NOTE: Ed Braswell sees due process problems.

4. "Intelligence Data" Legislation -- This is probably the best of all of the proposals. The problem is to define the term with sufficient specificity (probably by locking it into "intelligence sources and methods") to justify the fact that (1) the propriety of affixing the classification is not a matter for jury determination and (2) there is no need to prove intent to harm the U. S. Government or benefit a foreign government. Precedent for this legislation is found in 18 U. S. C. 798(a) (COMINT) and 42 U. S. C. 2227 (Restricted Data). The legislation could also include authority for injunction proceedings similar to that found in the Atomic Energy Act (42 U. S. C. 2280) upon a showing that a person has engaged or is about to engage in a proscribed activity.

5. Broadening Scarbeck Statute -- This has the same advantages as the "intelligence data" legislation. The problem is that the Scarbeck statute standard involves any classified information. Currently, it is a crime only if the "classified information" is passed to an agent of a foreign government or a Communist front organization. The proposal would make it a crime to pass classified information to any unauthorized person such as a newspaper man and the recipient himself on the basis of this crime

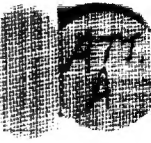
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statutes. The Commission on the revision of the Criminal Code has already reacted negatively to this recommendation. Since an authorized recipient is a determination to be made within the Executive Branch under the authority of the President, one can see the likelihood of charges that such a statute would be used politically.

6. Strategy -- With respect to both four and five above, LRH recognizes their serious policy and political implications and believes our prospects for success are better if we work through the revision of the Federal Criminal Code. This may be too limiting. It is quite likely that that revision will drag out over a number of Congresses. Perhaps the makeup of the upcoming Congress will be favorable towards legislation seeking to tighten up in the area of protecting classified information. It is quite possible that the Armed Services Committee would look favorable upon "intelligence data" amendment to the CIA Act of 1949 or to the National Security Act of 1947. It is recognized that there is concern that any amendment to those Acts may carry over into other provisions. While this may be a risk it is a risk that can be assessed and at least in the House can be avoided through the use of a "closed rule" when the matter comes to the floor. Also the Scarbeck statute is a part of the Internal Security Act of 1950 which in the House falls under the jurisdiction of Ichords Internal Security Committee and Eastland's Internal Security

Subcommittee in the Senate. Both of these Committees are considered to be favorable forums for such legislation. In summary, the Judiciary Committees of both Houses do not have a jurisdictional lock on the legislation, seeking the improvements through the general revision of the Federal Criminal Code most likely will be a long drawn-out process, and there are other alternatives which ought not to be dismissed at this time.

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10 October 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Proposal for Annuity Forfeiture Upon Determination  
By the Director That a Participant Has Violated  
Secrecy Agreement

Arguments for the Proposal:

1. Policy. Policymakers want tighter laws to prevent unauthorized disclosures. Any related proposal, having reasonable survivability prospects in the legislative process, should be pushed.
2. Obligations of Law. Consistent with the Director's responsibility for "protecting intelligence sources and methods" he should take the lead in pushing any reasonable proposal giving him additional leverage in fulfilling that responsibility. Under current authority the Director can terminate an employee, but he has no comparable leverage once retirement benefits vest. Obviously, in any one case a retired employee can do just as much or more damage to intelligence sources and methods.
3. Statutory Precedent. Statutory precedent exists: 5USCA 8311 to 8313 and P.L. 88-643, section 234(a).
4. Minimum Repercussions. The proposition involving as it does an amendment to the 1964 CIA Retirement Act is unlikely to prompt floor amendments aimed at the Director's authorities in the 1947 and 1949 Acts.
5. Court Decisions. The proposition is a logical statutory extension of the Marchetti case decision by denying benefits to one who has breached a condition of employment.
6. Congressional Climate. The 93rd Congress may be so constituted that it will present an unique opportunity for obtaining favorable action on this or similar proposals.

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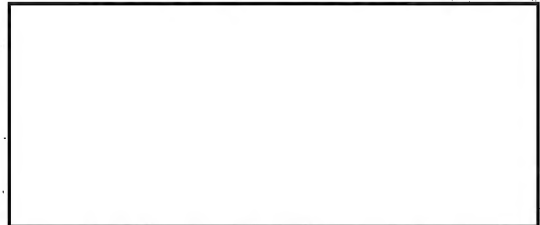
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### Arguments Against the Proposal:

1. Public Reaction. Regardless of its merits, the proposition will most likely generate strong public reaction that the Agency and/or the Administration is applying the screws to CIA employees for a number of nefarious reasons, e. g., to avoid embarrassment to Administration policies, to attempt to influence the judgment of the objectivity and integrity of CIA employees, etc.
2. History. The legislative precedent for the proposition was born in a period of American history which many people still view with emotion. This will tend to support misunderstanding of the proposition regardless of its merit.
3. Limited Effect. The CIA Retirement Act applies to only one-third of the work force. The other two-thirds are also exposed to highly sensitive information and are signatories to secrecy agreements, but would not be subject to the proposed sanctions (an interesting side effect of this disparity is to provide further support for extending the CIA Retirement Act to all employees).
4. Lack of Specific Precedent. The general law which applies to all Federal staff retirement systems, including CIA's, provides for the forfeiture of retirement benefits for, among other things, a conviction arising out of "disclosure of classified information". The proposal provides for such forfeiture on a unilateral determination by the Director. The obvious point is why is existing law not sufficient and what justifies resort to administrative fiat.
5. Due Process--Justiciability. In the 93rd Congress we will be facing Senator Ervin and others who apparently have sincere difficulty in appreciating why we are placed at a disadvantage in court cases. Clearly, since the proposal does not provide for appeal and is not on its face justiciable, we should expect a strong fight from Senator Ervin and others.
6. General Applicability. If the proposition has validity, it should apply to all Federal employees who sign secrecy agreements and should, therefore, conform to the process and other requirements that now appear in the comparable sections of Title 5. It should apply to all Federal staff retirement systems.

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7. Half a Loaf. The principal purpose to be served by the proposal is to deter the unauthorized disclosure of classified information. Yet it has only limited application. If we are going to step in the breach, weather the storm of public/congressional reaction, and use up our credit in a number of our Hill accounts, shouldn't we go all out and attempt to get an enactment such as the intelligence data proposal, which is going to be worth the price.



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Assistant Legislative Counsel

**Distribution:**

Orig - File

1 - Mr. Warner

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